

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

MAXIE MCNABB,)	
)	
Plaintiff)	CIVIL ACTION NO:
)	2:06-0664-MHT
v.)	
)	
SANDERS LEAD COMPANY, INC.)	
)	
Defendant.)	

PLAINTIFF'S MOTION TO COMPEL

COMES NOW, the Plaintiff, Maxie McNabb, and respectfully moves this Honorable Court to compel the Defendant, Sanders Lead Company, Inc., to produce documents requested by the Plaintiff in Plaintiff's First Request for Production of Documents. Plaintiff is seeking such relief from the Court because despite numerous phone conversations and written correspondence, the Defendant has not responded adequately to Plaintiff's Request for Production No.8 seeking basic comparator information from employee personnel files . As grounds for this Motion to Compel, the Plaintiff states as follows:

I. PROCEDURAL HISTORY

1. Plaintiff McNabb, fifty-four years old at the time of the decisions at issue, filed the above styled employment discrimination lawsuit alleging that the Defendant failed to recall and/or rehire him because of his age and that it retaliated against him on for opposing and reporting age discrimination. McNabb, a former employee, sought to be re-hired after a reduction in force.

2. On January 17, 2007, McNabb served Plaintiff's First Interrogatories and Request for Production of Documents on the Defendant. (Ex. 1). Defendant responded on February 16, 2007. (Ex. 2).

3. Pursuant to Rule 37 of the Federal Rules of Civil Procedure, McNabb requested by letter dated June 8, 2007, that the Defendant supplement its discovery responses by June 15, 2007. (Ex. 3).

4. Defendant agreed to supplement its responses to each issue outlined in McNabb's letter of June 8, 2007, except Request for Production No. 8.

5. Request for Production No. 8 reads as follows:

8. All documents reflecting personnel information of all defendant's employees, wherever kept, who have been hired, transferred or promoted to vacant positions within the division or section where the plaintiff worked from October 2005 to the present. This should include, but not be limited to, file jacket(s), medical records, payroll records, time cards, absentee and tardiness records, discipline records, etc., and any other documents relating to the terms and conditions of employment.

6. The Defendant produced the applications of individuals who were hired into the department where McNabb was qualified to work from October 5, 2006 to the present, however, it has refused to provide any other personnel information for such persons- such as disciplines and attendance records.

7. By email dated June 13, 2007, Plaintiff McNabb offered to narrow his request to seek only information related to discipline, attendance, and tardiness received by individuals hired, transferred or promoted to vacant positions within the division or section where he worked from October 2005 to the present. (Ex. 4).

8. The information about comparators is important because Sanders Lead Company Inc. argued in its Brief In Support of Its Motion for Summary Judgment that: "Sanders Lead discharged Mr. McNabb as part of a work force reduction for the following reasons: (1) discipline

problems (2) poor work ethic and (3) unsatisfactory production.”¹ Thus, McNabb’s work performance as compared to other employees is directly relevant to issues in the case.

9. Plaintiff McNabb explained that he could forego receiving any information regarding pay, medical records, health benefits, or any thing to do with salary, but that he needed, the aforementioned information because of the comparator issue.

10. Moreover, from the application documents the Defendant has produced, it appears that approximately forty individuals outside of McNabb’s protected category were hired into his department after his being laid off. (Ex. 5). Approximately twenty-eight of those persons were under the age of thirty when hired. (Id.). Some of these individuals were former employees who had been terminated by the Defendant in the past for offenses such as falling asleep at work and tardiness.

11. By email dated June 14, 2007, the Defendant expressed skepticism with regard to producing the information sought by McNabb as it believed the request was not narrowly tailored and violative of, *inter alia*, HIPPA and other unspecified employee privacy acts.² (Ex. 6). Defendant further stated that it would let the Plaintiff know by June 15, 2007, whether it would produce the requested information. Defendant has refused to produce the requested documents.

12. By its actions the Defendant has unilaterally and unreasonably limited the Plaintiff’s access to documents and information that are critically relevant to the prosecution of Plaintiff’s case. These tactics are improper and fly in the face of **established case law** and the liberal discovery rules.

¹Likewise, in its statement of facts, the Defendant cites to numerous instances of absenteeism and misconduct on the part of McNabb. (See Doc.#10, Def. Br. pp. 2-7).

² McNabb is unsure what employees privacy act the defendant refers to. The redacted portion of this exhibit concerns confidential settlement negotiations.

Unless the requested information is compelled by this Court, the Defendant's unilateral discovery limitation will result in prejudice to the Plaintiff.

13. Additionally, although the Defendant recently provided signed responses to McNabb's First Interrogatories Production of Documents, the interrogatories were not sworn to by the Defendant under oath as required by Federal Rule Civil Procedure 33(b)(1).

II. THE STANDARD FOR DISCOVERY

As this Court is well aware, the Federal Rules of Civil Procedure allow for liberal discovery. Pursuant to Federal Rule of Civil Procedure 26(b)(1), parties may discover:

“any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to discovery of admissible evidence.” (emphasis added).

On June 12, 2007, the Eleventh Circuit restated this bedrock principle of federal litigation, in *Adkins v. Christie*, 2007 WL 1673510 (11th Cir. 2007).

In *Adkins*, an African-American physician appealed a decision by the district court recognizing a privilege for certain medical documents and improperly limiting the scope of discovery. During discovery, Adkins requested documents relating to the peer review of all physicians at the hospital during the seven years he was a member of the hospital staff. The defendants filed a motion for protective order, arguing that the information sought was protected by the Georgia medical review privilege. (*Id.* at p. 2). This so called “medical peer review privilege”

sought to protect from discovery and disclosure records containing performance reviews and assessments of physicians by their peers, primarily in connection with their practices at hospitals. (Id. at p. 1).

The district court held that the privilege applied to federal civil rights actions and ordered the defendants to provide Adkins with descriptions of the incidents giving rise to peer review, without disclosing the documents themselves. Moreover, the district court limited production to peer review documents covering physicians it deemed similarly situated to Adkins, i.e. those that worked in his department for the previous five years, rather than to all physicians with staff privileges at the hospital during the seven years that Adkins worked there. (Id. at p. 2). At the close of discovery, with these limitations in place, the district court then granted defendant's motion for summary judgment. (Id.).

On appeal, the Court stated that the: "documents that HMC (the defendants) seek to protect are critical to Adkins' discrimination claims. The only way that Adkins can demonstrate the existence of disparate treatment in his case against the hospital is to compare his peer review with the peer review files of other physicians at HMC." (Id. at p. 4). After balancing the interest of the defendants in keeping such information out of the public domain and the competing interest of rooting out invidious discrimination, the Court sided with the plaintiff and declined to recognize the medical peer review privilege. As to scope of the discovery issue, the Court held that the limitations placed on the plaintiff were improper and that he should be able to place his case within the context of the larger disciplinary processes of the hospital and any thing less placed an excessive burden on his ability to pursue his claim. The district court's decision was vacated and remanded.

In the case at bar, McNabb is not seeking any information regarding any issue that could

remotely be described as privileged or confidential. McNabb is not seeking confidential medical information. McNabb stated as much through his attorney of record in the June 13, 2007 email mentioned above.

Defendant cannot realistically state that the discovery of disciplinary records, absentee records, and tardiness records are deserving of some type of protection when they themselves assert these issues as a basis for the actions they took regarding McNabb. Denying McNabb these documents excessively narrows the scope of the discovery needed for him to pursue his claims. This was deemed improper in *Adkins* and is equally improper here.

Furthermore, as this Court is well aware, the scope of discovery is not limited to issues raised in the pleadings, "for discovery itself is designed to help define and clarify the issues." *Lyoch v. Anheuser-Busch Co.*, 164 F.R.D. 62 (E.D.Mo. 1995) (quoting *Flanagan v. Travelers Ins.Co.*, 111 F.R.D. 42, 45 (W.D.N.Y. 1986). Moreover, the liberal standards governing discovery in discrimination cases are well established. *See, Lyoch v. Anheuser-Busch Co.*, 164 F.R.D. 62 (E.D.Mo. 1995). In fact, in *Wards Cove Packing Company v. Atonio*, 490 U.S. 642, 657 (1989), the Supreme Court held that a Plaintiff in a Title VII lawsuit may employ "liberal civil discovery rules" to obtain "broad access to employer's records." By its actions the Defendant in this case is attempting to unilaterally limit the Plaintiff's discovery to only issues it deems are relevant which is highly improper.

A plaintiff bringing an individual claim of discrimination must be given a full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for his rejection were in fact a coverup for a discriminatory decision. The information and documents requested by the Plaintiff, in the instant action, are necessary to assist the Plaintiff in establishing his

claims of age discrimination and retaliation. Request for Production No. 8, in its pared down state, is reasonably calculated to secure or lead to relevant information regarding employment practices at the Defendant's organization.

Sanders Lead Company Inc.'s refusal to provide the work records of other employees while citing McNabb's work record as the reason he was not re-hired goes against the case law concerning proof of discrimination. Sander's Lead injected work performance into this re-hiring and/or recall case and put the employee work records at issue. As the Circuit stated in *Adkins**5 and Federal Rules of Civil Procedure 26(b)(1) provide, "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence."

IV. CONCLUSION

The Defendant's refusal to fully respond to the Requests For Production No. 8 has prejudiced the Plaintiff's ability to prepare a response to summary judgment and proceed with discovery. Wherefore, the Plaintiff respectfully moves this Honorable Court to Order the Defendant, Sanders Lead Company, Inc., to produce the discovery specified in this motion at the Plaintiff's attorney's offices in Birmingham, Alabama, within seven days of entry of an Order compelling the Defendant to produce the overdue discovery. Further, Sanders Lead Company should be required to provide sworn interrogatory responses as provided by Federal Rule of Civil Procedure 33(b)(1).

Respectfully submitted,

/s/Roderick T. Cooks
Attorney for the Plaintiff

OF COUNSEL:

WINSTON COOKS, LLC

The Penick Building

319-17th Street North

Birmingham, AL 35203

Tel: (205)502-0970

Fax: (205)251-0231

email: rcooks@winstoncooks.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document on all persons listed below by CMF/Electronic Mail and/or U. S. Mail, postage prepaid and addressed to them as follows:

Matthew M. Baker, Esq.

Cervera, Ralph & Reeves, LLC

P.O. Box 325

914 South Brundidge Street

Troy, Alabama 36081

(334) 566-0116

(334) 566-4703 fax

Done this the 18th day of June, 2007.

s/Roderick T. Cooks
Of Counsel

EXHIBIT #1

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

MAXIE MCNABB,

Plaintiff

V.

SANDERS LEAD COMPANY, INC.

Defendant.

**CIVIL ACTION NO:
2:06-0664-MHT**

**PLAINTIFF'S FIRST INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Federal Rules of Civil Procedure 26, 33 and 34, the plaintiff propounds these interrogatories and request for production to the defendant and its officers, attorneys, agents, contractors, and employees having any information or documents which are available to the defendant. These interrogatories and document requests are to be answered separately and severally by the defendant in the manner and form provided by law and the rules of court.

Where facts set forth in answers, or portions thereof, are supplied upon information and belief, rather than upon personal knowledge, defendant should so state and specifically identify and describe the source or sources of such information and belief. Should defendant be unable to answer any interrogatory or portion thereof by actual knowledge, or upon information and belief, it shall state in detail its efforts to obtain such knowledge as will enable it to answer said interrogatory or portions thereof.

Answers to these interrogatories and document request shall be responsive to the date on which the answers are filed and shall be continuing in character and require the filing of supplemental answers if further or different information on documents relative thereto becomes known before trial. Where knowledge or information of the defendant is requested, such request

includes knowledge of its agents, contractors, representatives, and unless privileged, its attorneys.

DEFINITIONS

A. As used herein, the definitions for the term "document" means without limitation, the following items, whether printed, recorded or reproduced by any other mechanical means or process, or written or produced by hand: agreements; contracts; communications; correspondence; letters; telegrams; tape recordings; e-mails; memoranda; notes; summaries or other recordings of telephone conversations, personal conversations, or meetings; agenda of meetings; notices; records; bid records; personal memoranda; photographs; photographic slides; motion picture films; charts; graphs; diagrams; reports; statement of witnesses; findings of investigations; files; reports of experts; reports of consultants; papers; books; records; summaries; and any and every other writing or other graphic means by which human intelligence is in any way transmitted or reported.

B. As used herein, the term "oral communication" means any words heard or spoken, and including, without limitation, words spoken at any meeting, discussion, speech or conversation, including any telephone conversation.

C. As used herein, the term "person" includes natural persons, governments (or agencies thereof), quasi-public entities, corporations, partnerships, ventures, and all other forms of organization, association or business entities.

D. As used herein, the term "you," "company," or "defendant" means the named defendant in this action and the officers, attorneys, agents and employees of such defendant having information available to the defendant within the meaning of Rule 33(a).

E. "Identify" when referring to a natural person means to provide an identification sufficient to notice a deposition of such person and to serve such person with process to require his

or her attendance at a place of examination and shall include, without limitation, his or her full name, present or last known home address, present or last known business affiliation and address, title or occupation, and each of the positions held by such persons during the applicable time covered by any answer referring to such person.

F. "Identify" when referring to a document or writing means to give sufficient characterization of such document or writing so as to have identified it "with reasonable particularity" for purposes of Rule 33 and of Rule 34 of the Federal Rules of Civil Procedure. More particularly, the term "identify" when used with reference to a document includes:

- a. date the document bears, or if none, under the date it was written;
- b. name and address of each person who wrote it or participated in the writing of it;
- c. name and address of each person to whom it was addressed and each person to whom a copy was identified as being directed;
- d. name and address of each person who received a copy of the document;
- e. description of the document, as for instance, a letter or memorandum;
- f. its present location or custodian of each copy, or if unknown, its last known location or custodian;
- g. if any document is no longer in defendant's possession, or subject to defendant's control state what disposition was made of it, the reason for such disposition, the identity of the person currently having possession or control and the date that possession or control was relinquished by the defendant or any one of them.

When used with reference to an oral communication, "identify" means to includes the following:

- a. all persons participating in such oral communication;
- b. date, manner (e.g., telephone) and place at which persons participated in or heard the oral communication were located;
- c. a description of the circumstances surrounding the communications, as, for instance, meeting, speech or conversation;
- d. name of each person who was present, other than the participants;
- e. substance of the oral communication.

G. As used herein, the term "date" shall mean the exact day, month and year, if ascertainable, or if not, the best approximation thereof, including relationship to other events.

H. "Personnel File" shall include data or information which pertains to employees, applicants for employment, persons seeking employment, or former employees, and includes, but is not limited to, information on any individual or aggregate of individuals concerning applicant flow, residence, interviews, tests, evaluations, referrals from referral agencies, length of service, absences, tardiness, educational level, selection, job assignment, performance, training, qualifications, validation of tests, promotion, health, and/or safety, vacancies, job applications, test results, marital status, sex, age, race, family status, recruitment, discipline, counseling, supervisors notes, supervisors files, etc.

I. As used herein the term "discipline" shall include any action taken in regard to an employee which is intended to punish and/or correct some aspect of the employee's behavior conduct or performance, including, but not limited to, the following actions: verbal warning, written warning, verbal reprimand, written reprimand, suspension, demotion, placement or probation, fine, etc.

J. As used herein, the term "termination" shall include any one or more of the following

actions which interrupt an employee's service of employment with the defendant: layoff, discharge, quit, resignation, terminated, fired, etc.

K. User means a person who has access to a computer or in any manner uses or directs another to use any information stored in or generated by a computer.

L. Computer or Computer Equipment means all data processing equipment, including but not limited to, central processing units, tape drives, drum and disk storage devices, control units, input devices, and output devices; all unit record equipment, including but not limited to, accumulators, calculators, and sorters; all record storage and retrieval equipment, including but not limited to, microfilm storage and retrieval apparatus, and audio/visual storage and retrieval apparatus.

M. Computer System means an assembly of computer operations and procedures, persons, equipment, and hardware and software, united by some form of regulated interaction to form an organized whole.

N. Computer or Electronic Information or Data or Database means all written or numerical information or data that is inputted, processed, or contained in the Computer System for any purpose.

O. Computer Program means a set of instructions or steps, usually in symbolic form, that generates machine instructions and tells the computer how to handle a problem or sort information.

P. Computer Application means a program that performs a specific task or function including, email messaging, word processing, or spread sheets.

Q. Defendant's Computer System means any and all Computer Equipment or Computer

Systems located at the defendant's premises or accessible for use by defendant.

R. Email means an electronic messaging application that provides for the receipt and sending of messages among users of a computer system and possibly to and from remote users.

S. Operating System means an organized collection of programs for operating a computer, usually part of a software package defined to simplify housekeeping such as input/output procedures, sort merge generators, and so on.

T. Back-Up Tapes means magnetic tape storage or archiving of Electronic Information originally contained on a Computer System.

U. Computer Log means Computer System usage records such as a listing of electronically stored information, and may include title, subject matter, or first line of the document information and the date of the document.

V. Computer System Media means the type of material used for storage of electronic information and includes floppy disks, hard drives, and magnetic tapes.

W. Purge means to periodically or randomly delete or take off of the Computer Systems

Email messages and transfer this information to Back-Up Tapes to restore or make usable computer memory.

INTERROGATORIES

1. Please identify each and every position Maxie McNabb held with the respondent from his date of hire to the present, including job title, rate of pay, and time in position.

2. Please identify by age, name, job title, rate of pay and date of hire each and every employee that has worked in the defendant's Furnace Department and Casting & Alloy Department from October 2005 to the present. Please include in your answer the dates these employees were hired

into the Furnace Department and/or Casting & Alloy Department and whether they are current employees.

3. Do you alleged or contend that Maxie McNabb was unqualified to work in the Furnace Department and/or the Casting & Alloy Department? If so, please state each and every reason for your allegation.

4. Please identify each individual by age, name, and job title who evaluated McNabb's performance during his term of employment with the defendant. Please include in your answer the results of any such evaluations.

5. Please identify each and every individual by name, age, job title, rate of pay and date of hire who was hired into the Furnace Department and/or the Casting & Alloy Department from October 2005 to the present.

6. Please state whether defendant is covered by employment practices liability insurance.

7. Please state whether you have any information that would in any way relate to plaintiff's veracity, character, or morality, and if so, describe.

8. Do you deny that the defendant was plaintiff's employer? If your answer is no, please identify the correct name of plaintiff's employer.

9. Describe in detail the organizational structure for the division or section of the defendant's operation wherein the plaintiff was employed, identifying each officer, executive, or higher management employee and their responsibilities.

10. Describe in detail the defendant's personnel procedures regarding discharge, reductions in force, call backs to work and re-hire, identifying each person responsible for establishing and

carrying out the procedures. Identify any documents which support your response.

11. If you contend that plaintiff's performance of his duties and responsibilities were in any way deficient, please state the specific details of all such deficiencies. Identify any documents which support your answer.

12. Do you contend that plaintiff was unable to perform successfully all the duties and responsibilities of his position(s)?

13. From October 2002 to the present, did you discuss or engage in communications concerning the consequences surrounding the plaintiff's discharge from the defendant, including oral, written, or electronic discussions and communications?

14. If your answer to Interrogatory 13 is yes, describe fully the substance of each non-privileged discussion or communication, including the date, time, place and form of each such discussion or communication.

15. If your answer to Interrogatory 13 is yes, identify every person who was present at each such discussion or communication, including the recipients and sender of the communication and any person to whom the communication was directed.

16. If your answer to Interrogatory 13 is yes, Identify all Documents, including electronic documents, that contain the discussions or communications.

17. From October 2005 to the present , please state whether Back-Up Tapes were made of any Computer System Email messages, word processing documents, and correspondence relating to the Plaintiff's claims in this case.

18. If your answer to Interrogatory 17 is yes, state:

(a) The custodian of those tapes;

(b) Identification numbers or the system for identification for those tapes; and

(c) The location of those tapes.

19. From October 2005 to the present, state whether a periodic or random Purge of Email messaging was performed.

20. If your answer to Interrogatory 19 is yes, state when that purge occurred and identify the back-up tape the electronic information was transferred to.

21. State whether you deleted or "trashed" email messages regarding plaintiff's termination.

22. If your answer to Interrogatory 21 is yes, state:

(a) The substance of those deleted or "trashed" email messages;

(b) The sender and recipients of those messages, and

(c) The date and time of those messages.

REQUESTS FOR PRODUCTION

Plaintiff requests that the defendant copy and produce, unless over 200 pages per request, within the time provided by Rule 34, Federal Rules of Civil Procedure, at the offices of plaintiff's attorney the requested documents. If any request is over 200 pages, please contact plaintiff's counsel before reproducing.

1. Please produce all documents identified or used in responding to Plaintiff's First and Interrogatories and Requests For Production.

2. Please produce the complete personnel file of Maxie McNabb, including records pertaining to job duties, salary, promotions, evaluations, discipline, benefits, promotions, discharge and reassignments, wherever kept, and all communications, e-mails, memos, forms or documents

pertaining to the plaintiff

3. Please provide any and all documents relating to any previous EEOC charges and/or lawsuits alleging discrimination on the basis of age and/or retaliation which have been filed against the defendant, including, but not limited to, the charge filed by the named plaintiff from October 2005 to the present.

4. All documents which reflect the breakdown of the workforce by age for the departments in which the plaintiff was employed from October 2005 to the present.

5. Please provide a copy of defendant's policies and procedures manual, if such exist, that was in effect from October 2005 to the present.

6. Please provided all documents which would identify vacancies with defendant from October 2005 to the present date.

7. Please provide all advertisements and job postings placed by defendant from October 2005 to the present date and all documents which show or tend to show applicant flow data of the applicants who applied for employment, promotions or transfers into jobs in the Furnace Department and/or the Casting & Alloy Department from October 2005 to the present.

8. All documents reflecting personnel information of all defendant's employees wherever kept, who have been hired, transferred or promoted to vacant positions within the division or section where the plaintiff worked from October 2005 to the present. This should include, but not be limited to, file jacket(s), medical records, payroll records, time cards, absentee and tardiness records, discipline records, etc., and any other documents relating to the terms and conditions of employment.

9. Please provide all documents which describe policies, practices, procedures, rules or criteria used in hiring, discharging, promoting and transferring employees which have been effect from

October 2005 to the present.

10. Please provide all documents relating to the complete personnel file, including time sheets or daily attendance records, wherever kept, of the person(s) who subsequently assumed the job duties and responsibilities of the plaintiff.

11. Please provide any or all documents and/or tables which show the organization of the defendant from October 2005 to the present.

12. Please provide any and all tape recording, tape, transcript, note, diary, journal, calender, or other document that in any way relates to, or pertains to, the allegations in the Complaint or Charge filed with the EEOC.

Respectfully submitted,

/s/Roderick T. Cooks
Counsel for Plaintiff

OF COUNSEL:

WINSTON COOKS, LLC

The Penick Building

319-17th Street North

Birmingham, AL 35203

Tel: (205)502-0970

Fax: (205)251-0231

email: rcooks@winstoncooks.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document on all persons listed below by CMF/Electronic Mail and/or U. S. Mail, postage prepaid and addressed to them as follows:

Matthew M. Baker, Esq.
Cervera, Ralph & Reeves, LLC
P.O. Box 325
914 South Brundidge Street
Troy, Alabama 36081
(334) 566-0116
(334) 566-4703 fax

Done this the 17th day of January, 2007.

s/Roderick T. Cooks
Of Counsel

EXHIBIT #2

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

MAXIE MCNABB,

Plaintiff,

v.

SANDERS LEAD COMPANY, INC.,

Defendant.

CIVIL ACTION NO. 2:06cv664-MHT

**DEFENDANT SANDERS LEAD COMPANY, INC'S RESPONSES TO PLAINTIFF'S
FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION**

COMES NOW the Defendant in the above-styled cause and answers the following interrogatories and request for production propounded by Plaintiff Maxie McNabb.

GENERAL OBJECTIONS

Defendant objects to each of Plaintiff's interrogatories to the extent that each is overly broad, vague, unduly burdensome, seeks information not designed nor reasonably calculated to lead to the discovery of relevant evidence; and, purports to request information protected by the attorney/ client privilege or work product doctrine or seeks information taken and/ or prepared in anticipation of litigation, or privileged, not subject to discovery or which otherwise are impermissible subjects of discovery under the rules of civil procedure.

Defendant objects to each interrogatory to the extent each seeks documents or things which constitute confidential, proprietary information, or to which Defendant has a duty or obligation of confidentiality with respect to persons or entities not parties to this

litigation. This objection is made specifically, but without limitation, with respect to any request which entails disclosure of the identities or other confidential information of persons not parties to this litigation, whose privacy rights would be violated by such disclosure.

ANSWERS TO INTERROGATORIES

1. See change of employee status forms in the attached personnel file.
2. Defendant objects to this interrogatory to the extent that it is overly broad and unduly burdensome. Notwithstanding said objection, Defendant states that the information requested is contained within the attached documents.
3. As far as Defendant knows, Plaintiff was physically able to perform his job duties. A medical doctor would provide a more definitive answer.
4. See employee evaluation forms in the attached personnel file.
5. Defendant objects to this interrogatory to the extent that it is overly broad and unduly burdensome and not reasonably designed or calculated to lead to relevant and admissible discovery. Notwithstanding said objection, Defendant states that the information requested is contained within the attached documents.
- 5a. Defendant objects to this interrogatory to the extent that it is overly broad and unduly burdensome and not reasonably designed or calculated to lead to relevant and admissible discovery. Notwithstanding said objection, Defendant states that the information requested is contained within the attached documents.
6. Defendant is not covered by any employment practices liability insurance.
7. Defendant's personnel file, which is attached.
8. Plaintiff was employed with Defendant in the casting and alloy department.
9. Bart Sanders is the plant manager. Ricky Brewer is the assistant plant manager. Edgar Fannin is the Department head. Leon Bennett is the shift supervisor.
10. Any personnel procedures would be established by the plant manager, Bart Sanders and Sam Kitchens would carry out said procedures.
11. Plaintiff was excessively absent without notification, excessively late to work and was insubordinate at times.

12. Defendant is without sufficient knowledge to answer this question.
 13. Defendant objects to this interrogatory as the information sought is protected by attorney client privilege.
 14. Defendant objects to this interrogatory as the information sought is protected by attorney client privilege.
 15. Defendant objects to this interrogatory as the information sought is protected by attorney client privilege.
 16. Defendant objects to this interrogatory as the information sought is protected by attorney client privilege.
 17. There were none.
 18.
 - a. See response to number 17.
 - b. See response to number 17.
 - c. See response to number 17.
 19. There were none.
 20. See response to 19.
 21. No.
-
22.
 - a. See response to number 21.
 - b. See response to number 21.
 - c. See response to number 21.
 23. No.

DEFENDANT'S RESPONSES TO PLAINTIFF'S REQUESTS FOR PRODUCTION

1. Attached.
2. Attached.
3. No

4. Attached.
 5. Attached.
 6. None.
 7. Attached.
 8. Defendant objects to this interrogatory to the extent that it is overly broad and unduly burdensome. Notwithstanding said objection, employee hirings are included in the attached documents.
 9. Attached.
 10. Plaintiff was part of a reduction in force on the part of the Defendant. Nobody has replaced the Plaintiff.
 11. None.
 12. Attached.
 13. Attached.
 14. None, any communication was oral.
 15. Attached.
 16. None, any communication was oral.
-
17. None.

Respectfully submitted this the 16th day of February, 2007.



Matthew M. Baker (BAK017)
N.J. Cervera (CER001)
Frank P. Ralph (RAL002)
Grady A. Reeves (REE042)
Attorneys for Defendant

OF COUNSEL:

Cervera, Ralph & Reeves, LLC

P. O. Box 325

914 South Brundidge Street

Troy, Alabama 36081

(334) 566-0116

(334) 566-4073 fax

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by Federal Express properly addressed to:

Roderick T. Cooks, Esq.

WINSTON COOKS, LLC

The Penick Building

319 17th Street North

Birmingham, Alabama 35203

this the 16th day of February, 2007.

OF COUNSEL

EXHIBIT #3

The Penick Building
319 17th Street North
Birmingham, AL 35203

Facsimile: (205) 251-0231

Lee Winston
(205) 502-0940

Roderick T. Cooks
(205) 502-0970



VIA U.S. MAIL & EMAIL

Matthew Baker, Esq.
CERVERA, RALPH & REEVES, L.L.C.
Post Office Box 325
914 South Brundidge Street
Troy, Alabama 36081

THE LAW OFFICES

OF

WINSTON COOKS

A Limited Liability Company

June 8, 2007

**Re: McNabb v. Sanders Lead Company, Inc.,
CV-2:06-00664**

Dear Matt:

Please, find enclosed *Plaintiff's Responses to Defendant's First Interrogatories and Request for Production of Documents*. The interrogatories are not signed but we anticipate having a signed copy to you shortly. Also, we are in receipt of the Defendant's responses to *Plaintiffs' First Interrogatories and Request for Production of Documents*. First, we would ask that the Defendant provide us with a signed copy of its interrogatories. Second, upon review of the Defendant's responses, I note the following deficiencies:

**PLAINTIFFS' FIRST INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS**

13. From October 2002 to the present, did you discuss or engage in communications concerning the consequences surrounding the plaintiff's discharge from the defendant, including oral, written, or electronic discussions and communications?
14. If your answer to Interrogatory 13 is yes, describe fully the substance of each non-privileged discussion or communication, including the date, time, place and form of each such discussion or communication.
15. If your answer to Interrogatory 13 is yes, identify every person who was present at

Roderick Cooks

From: Roderick Cooks [rcooks@winstoncooks.com]
Sent: Wednesday, June 13, 2007 3:21 PM
To: 'Matt Baker'
Cc: 'Lee Winston'
Subject: RE: depo notices

Matt, that is fine we will do them in Troy and I will get you the notices on tomorrow. I will only need June 20 not the 21st. Also, at this time I am again asking that the defendant supplement its response to Request for Production No. 8. We can agree to not seek pay, medical records, health benefit information, or any thing to do with salary.

However, the discipline, attendance, and tardiness records are very relevant since you all claim that is part of the reason Mr. McNabb was not rehired. I will need these documents by Friday, June 15, 2007 or we will have to file a motion to compel the production of this basic comparator information on Monday June 18, 2007.

With regard to taking Maxie's depo, I am clear on June 28 or 29.

Thanks

Roderick T. Cooks, Esq.
Winston Cooks, LLC
The Penick Building
319 - 17th Street North, Suite 200
Birmingham AL 35203
Contact: (205) 502-0970
Cellular: (205) 616-3349
Fax: (205) 251-0231
Email: rcooks@winstoncooks.com

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-----Original Message-----

From: Matt Baker [mailto:mbaker@troycable.net]
Sent: Wednesday, June 13, 2007 10:57 AM
To: Roderick Cooks
Subject: RE: depo notices

Rod:

Unfortunately, we will not be able to have the depositions in Montgomery. The people you are deposing need to miss as little work as possible. In order to do this, the depositions will need to be in Troy.

Additionally, we would like to depose Mr. McNabb. If you would let me know what day he will be available, I will send a notice. Thanks.

Matt

-----Original Message-----

From: "Roderick Cooks" <rcooks@winstoncooks.com>
To: mbaker@troycable.net
Cc: "'Lee Winston'" <lwinston@winstoncooks.com>
Sent: 6/13/2007 10:06 AM

EXHIBIT #5

01/24/07

Sanders Lead Company, Inc.

Page 1

Employee Name	Department	Date of Birth	Date of Hire
ALEXANDER, MATTHEW D	CASTING & ALLOYING	09/07/1978	06/16/2006
BERRY SR, FRED L	CASTING & ALLOYING	08/06/1956	09/12/2006
BOSWELL, SANDY A	CASTING & ALLOYING	12/29/1984	04/21/2006
BOYD, JOHN E	CASTING & ALLOYING	10/18/1964	05/19/2006
BOYKIN, ROBERT D	CASTING & ALLOYING	11/08/1984	10/24/2006
BRUNDIDGE JR, ROBERT E	CASTING & ALLOYING	04/27/1977	05/05/2006
CARLISLE, JAMES B	CASTING & ALLOYING	07/20/1972	11/17/2006
CHAMBERS, CHRISTOPHER B	CASTING & ALLOYING	01/01/1979	09/22/2006
CLARK, CORNELIUS	CASTING & ALLOYING	06/23/1985	04/05/2006
COLLINS, DEMOND T	CASTING & ALLOYING	03/06/1974	03/30/2006
COYLE, DAVID L	CASTING & ALLOYING	10/31/1963	05/26/2006
DIXON, ALENDA E	CASTING & ALLOYING	11/04/1969	04/11/2006
FAISON, RODERICK	CASTING & ALLOYING	02/25/1961	11/27/2006
FEAGIN, LONNIE C	CASTING & ALLOYING	11/17/1958	07/07/2006
GAMBLE JR, TONY L	CASTING & ALLOYING	11/23/1980	11/06/2006
GILBERT, KENYATA	CASTING & ALLOYING	08/09/1986	05/26/2006
GRAHAM, TONY D	CASTING & ALLOYING	08/25/1984	08/11/2006
GRICE, LEDON A	CASTING & ALLOYING	02/29/1980	10/20/2006
HALL, ZANE B	CASTING & ALLOYING	11/05/1986	10/20/2006
HANNAH, JONAS R	CASTING & ALLOYING	03/29/1976	10/20/2006
HARLEY, II, RANDOLPH E	CASTING & ALLOYING	11/03/1986	04/27/2006
HARRIS, LYDELL	CASTING & ALLOYING	08/08/1976	09/01/2006
JACKSON, JERRELL T	CASTING & ALLOYING	11/29/1968	06/09/2006
JONES, JEREMIAH	CASTING & ALLOYING	01/07/1967	09/01/2006
JONES, TRENTON L	CASTING & ALLOYING	04/02/1974	09/05/2006
LIGHTFOOT, JOSEPH D	CASTING & ALLOYING	07/20/1980	09/26/2006
MARSHALL, RANDY	CASTING & ALLOYING	12/17/1967	02/17/2006
MC CRAY, MITCHELL E	CASTING & ALLOYING	05/18/1957	05/12/2006
MC GREW, KAUNTA K	CASTING & ALLOYING	02/07/1977	03/31/2006
MC NABB, DARRIAN Q	CASTING & ALLOYING	08/06/1986	04/25/2006
MC NABB, DESMUND T	CASTING & ALLOYING	05/08/1988	08/04/2006
MEADOWS JR, EDDIE R	CASTING & ALLOYING	01/06/1984	07/27/2006
MINCEY, JOE F	CASTING & ALLOYING	04/16/1963	11/03/2006
ORUM JR, LEON	CASTING & ALLOYING	06/22/1966	01/20/2006
PENNINGTON, TERRANCE T	CASTING & ALLOYING	04/23/1988	06/09/2006
PIERRE, MANACH	CASTING & ALLOYING	01/12/1975	10/06/2006
PRICE, ADRIAN S	CASTING & ALLOYING	01/28/1977	10/27/2006
ROUSE, ELIJAH R	CASTING & ALLOYING	05/23/1975	11/18/2006
SCOTT, ROBERT L	CASTING & ALLOYING	10/02/1966	03/24/2006
SIMS, DARIUS L	CASTING & ALLOYING	02/09/1987	04/15/2006
SNELL, FREDERICK T	CASTING & ALLOYING	11/05/1979	03/10/2006
SOLOMON, FELIX J	CASTING & ALLOYING	08/09/1983	06/02/2006
STARKS, MICHAEL L	CASTING & ALLOYING	11/14/1964	03/06/2006
SWANSON, RICCO L	CASTING & ALLOYING	05/28/1982	07/22/2006
THOMAS, JAMES V	CASTING & ALLOYING	04/20/1960	12/18/2006
THOMAS, MICHAEL S	CASTING & ALLOYING	03/13/1985	02/10/2006
TRUITT, MITCHELL T	CASTING & ALLOYING	12/12/1976	06/23/2006
TYRUES, JR, LARRY G	CASTING & ALLOYING	03/12/1973	11/17/2006
WARREN, BERSHACT	CASTING & ALLOYING	10/07/1982	10/20/2006
WASHINGTON, HENRY E	CASTING & ALLOYING	05/14/1964	11/17/2006
WILLIAMS, ASTIN R	CASTING & ALLOYING	08/27/1981	07/11/2006
WILLIAMS, NICHOUAS O	CASTING & ALLOYING	06/24/1985	06/12/2006
ZEIGLER, DERICK D	CASTING & ALLOYING	03/02/1983	09/22/2006
ADAMS, JERMAINE T	FURNACE	10/11/1975	07/22/2006

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Sanders Lead Company, Inc.

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Employee Name	Department	Date of Birth	Date of Hire
ALLEN JR, THOMAS J	FURNACE	09/14/1979	06/16/2006
BALLARD, MICHAEL D	FURNACE	11/23/1977	01/18/2006
BEEMAN, RONNIE W	FURNACE	06/26/1969	08/04/2006
BELL, TYRESE R	FURNACE	01/22/1974	03/25/2006
BLAIR, JOHN D	FURNACE	10/28/1981	02/21/2006
BLAIR, THOMAS P	FURNACE	11/25/1979	06/09/2006
BOYKINS, JOHNNY R	FURNACE	12/26/1960	12/18/2006
BROOKS, MARCUS C	FURNACE	12/06/1977	10/07/2006
BROWN, AUBREY S	FURNACE	07/07/1984	08/19/2006
BROWN, LARRY L	FURNACE	12/27/1978	02/17/2006
BROWN, WILLIAM C	FURNACE	04/29/1986	03/13/2006
BRYANT, STEVEN D	FURNACE	09/09/1973	08/23/2006
CAREY, JR, NATHANIEL	FURNACE	06/27/1954	07/29/2006
CARLTON, DAVRELL M	FURNACE	08/02/1986	12/08/2006
CHAMBERS, ROBERT J	FURNACE	09/23/1965	04/28/2006
CLARK JR, ARTHUR L	FURNACE	06/09/1963	12/09/2006
COLEMAN, MAURICE L	FURNACE	04/07/1983	10/27/2006
COLEMAN, RICHARD D	FURNACE	06/17/1981	11/03/2006
COLLINS, CORNELIUS M	FURNACE	01/24/1984	11/10/2006
COWART, JEFFERY D	FURNACE	02/20/1967	12/26/2006
COWART, MARIO D	FURNACE	11/23/1986	04/07/2006
CRENSHAW, ANDRE L	FURNACE	11/23/1984	11/01/2006
CROSWELL, MICKEY L	FURNACE	10/12/1986	04/08/2006
CUMMINGS, FREDDIE L	FURNACE	07/27/1966	02/17/2006
DANIELS, ALBERT J	FURNACE	02/17/1969	12/08/2006
DANIELS, KENDRICK D	FURNACE	03/30/1974	02/22/2006
DUNCAN, ANTHONY L	FURNACE	01/11/1971	03/13/2006
EVANS, KEVIN D	FURNACE	08/26/1985	07/17/2006
FOLMAR, ADRIAN T	FURNACE	05/17/1974	12/16/2006
FOSTER JR, LEO	FURNACE	10/25/1957	08/22/2006
FOSTER, BRYANT A	FURNACE	04/16/1986	06/02/2006
FOSTER, GERALD D	FURNACE	09/02/1975	02/24/2006
FRANKLIN, ANTONIO L	FURNACE	02/24/1970	11/17/2006
FULLER JR, ROGER L	FURNACE	06/03/1988	09/29/2006
FULLER, TYRONE R	FURNACE	12/31/1975	09/29/2006
GARY, JOSHUA	FURNACE	03/05/1979	12/15/2006
GILFORD, ROBERT A	FURNACE	01/07/1979	05/23/2006
GINYARD, REGINALD M	FURNACE	09/21/1983	10/24/2006
GLENN, VINCENT E	FURNACE	12/28/1981	10/17/2006
HARDIMON, JOHNNY R	FURNACE	10/30/1975	09/16/2006
HARRIS, DONOVAN R	FURNACE	02/12/1986	06/06/2006
HARRIS, SEQUOIA T	FURNACE	02/10/1985	09/29/2006
HERNANDEZ, OSCAR M	FURNACE	01/05/1985	03/18/2006
HILL, VINCENT C	FURNACE	10/26/1964	09/22/2006
HOLLINGHEAD, COREY D	FURNACE	05/04/1986	08/18/2006
HOOTEN, GREGORY B	FURNACE	10/07/1973	10/06/2006
HUMPHREY, ALKEYOWN J	FURNACE	12/16/1985	12/01/2006
JACKSON, BEN FRANK	FURNACE	02/06/1982	06/16/2006
JOHNSON, L V	FURNACE	09/14/1961	08/04/2006
JOHNSON, TED M	FURNACE	04/19/1983	05/15/2006
JONES, JOE L	FURNACE	11/05/1968	07/14/2006
JORDAN, TITUS	FURNACE	11/26/1975	12/08/2006
JUAREZ, SERGIO	FURNACE	04/05/1982	03/18/2006
KING, KELVIN A	FURNACE	01/05/1984	02/28/2006

01/24/07

Sanders Lead Company, Inc.

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Employee Name	Department	Date of Birth	Date of Hire
LOFTIN, DAVID L	FURNACE	07/14/1969	05/19/2006
LOWERY, FREDRICK N	FURNACE	09/14/1983	07/14/2006
MADISON JR, JAMES N	FURNACE	07/30/1975	06/02/2006
MAHONE, RANDY J	FURNACE	10/04/1979	07/11/2006
MAULDEN, CHRISTOPHER D	FURNACE	06/14/1987	09/08/2006
MAY, CRAIG D	FURNACE	08/10/1965	10/27/2006
MC BRYDE, WILLIE J	FURNACE	07/09/1972	09/08/2006
MC COY, JEFFERY J	FURNACE	10/04/1987	10/27/2006
MC CRAY, GREGG	FURNACE	03/21/1976	05/19/2006
MC CULLOUGH, AUNDEAUL K	FURNACE	05/07/1984	09/15/2006
MC GHEE, KENNETH L	FURNACE	01/07/1980	06/23/2006
MC NEIL, EARL O	FURNACE	04/24/1986	12/02/2006
MENDENHALL, JOHN D	FURNACE	11/25/1985	03/13/2006
MILLER, BERNARD	FURNACE	05/24/1967	10/06/2006
MILLER, DOMINIQUE A	FURNACE	03/31/1984	10/07/2006
NICKERSON, JERICO M	FURNACE	08/30/1980	03/17/2006
OLIVER, DEMETRIUS	FURNACE	01/08/1978	05/26/2006
PEOPLES, DEVIN D	FURNACE	06/30/1984	07/14/2006
POTTS, DEVECCHIO A	FURNACE	04/28/1977	04/21/2006
PRESLEY, DANIEL A	FURNACE	12/28/1987	03/24/2006
PRITCHETT, MAREO T	FURNACE	09/25/1981	11/17/2006
RAY, BILLY J	FURNACE	11/20/1965	03/11/2006
RAYBORN, TIMOTHY	FURNACE	09/04/1978	08/14/2006
RODGERS, EDRICK D	FURNACE	11/26/1976	05/30/2006
RODGERS, JAMES E	FURNACE	05/29/1960	07/21/2006
ROGERS, FRANKLIN M	FURNACE	08/14/1986	01/18/2006
ROUSE, JAMES A	FURNACE	12/29/1979	11/10/2006
RUSSAW, AARON U	FURNACE	12/16/1980	10/10/2006
SCOTT, MARCUS T	FURNACE	01/17/1988	12/26/2006
SENN, DUSTIN T	FURNACE	09/09/1980	10/13/2006
SEYMORE, JAMES E	FURNACE	05/06/1966	03/17/2006
SMILEY JR, HAROLD D	FURNACE	07/16/1970	02/10/2006
SMITH, DERRICK D	FURNACE	07/11/1985	11/25/2006
STILL, MELVIN	FURNACE	12/29/1970	02/01/2006
STRAUGHN, XAVIER M	FURNACE	08/03/1981	07/18/2006
STREETER, BOBBY T	FURNACE	01/12/1979	11/03/2006
STREETER, DUNCAN E	FURNACE	03/02/1963	07/28/2006
STRINGER, JIMMY D	FURNACE	03/21/1983	08/05/2006
TEAGUE, JR, WILLIE J	FURNACE	10/05/1972	05/06/2006
THOMPSON, JAMES A	FURNACE	11/23/1966	08/04/2006
TONEY JR, JOHNNIE	FURNACE	10/04/1963	02/10/2006
TONEY, DEANGELO M	FURNACE	06/17/1986	07/11/2006
VAUGHN III, ALEX	FURNACE	05/21/1960	09/08/2006
WASHINGTON, EARNEST L	FURNACE	07/13/1970	03/31/2006
WATTS, JOHN D	FURNACE	07/07/1979	03/10/2006
WILLIAMS, RAYFUS N	FURNACE	05/27/1976	03/22/2006
WOMACK, MICHAEL B	FURNACE	02/10/1985	01/27/2006
YOUNG, EDWARD L	FURNACE	01/08/1960	11/25/2006
YOUNGBLOOD, DEVARIUS A	FURNACE	05/21/1988	09/01/2006

EXHIBIT #6

Roderick Cooks

From: Matt Baker [mbaker@troycable.net]
Sent: Thursday, June 14, 2007 1:55 PM
To: 'Roderick Cooks'
Subject: RE: McNabb v. Sanders Lead

Rod:

I am planning on sending the supplemental responses tomorrow. You should receive them over the weekend. At this time, no final decision has been made as to request #8. It does seem that even if the requested information was produced, it will take many days to sort through it all. As stated previously, there does seem to be problems with your request.

First, much of the information sought seems to be privileged and protected by HIPAA and employees' privacy acts. There has been no HIPAA order requested or entered in this case. Second, your request does not seem to be narrowly tailored to fit into this lawsuit.

As to your two stated cases, the Miller case simply states the rule that "Statistical information concerning an employer's general policy and practice concerning minority employment may be relevant to a showing of pretext." The information you are seeking is neither statistical nor minority based. It is a blanket request. Further, the rule states that such information may be discoverable. A court would need to decide whether or not the request is relevant, unduly burdensome, overly broad, etc.

As for the Burns case, that request was narrowly tailored and specific to the alleged discrimination. Again, you have provided nothing more than a blanket request of all employees in the Plaintiff's division. You have filed an age discrimination case and the request should have been specific against those employees not in the Plaintiff's protected class.

The matter is being discussed and a final decision is expected tomorrow. Any thoughts you have other than what you have previously stated may help sway our thoughts on the situation.

In the original responses, you did receive all the new hirings that you asked for.

Sincerely,

Matthew M. Baker
Cervera, Ralph & Reeves, LLC
914 South Brundidge Street
P.O. Box 325
Troy, Alabama 36081

334-566-0116
334-566-4073 facsimile